

EXHIBIT

2

STATE OF TEXAS,
Plaintiff,

vs.

UNITED STATES OF AMERICA AND
ERIC H. HOLDER, JR., IN HIS
OFFICIAL CAPACITY AS ATTORNEY
GENERAL OF THE UNITED STATES,
Defendants, and

WENDY DAVIS et al.,
Defendant-Intervenors.

ORAL DEPOSITION OF
TEXAS HOUSE REPRESENTATIVE (AARON PENA)
October 19, 2011

ORAL DEPOSITION OF TEXAS HOUSE REPRESENTATIVE
(AARON PENA), produced as a witness at the instance of
the Defendants and duly sworn, was taken in the
above-styled and numbered cause on the 19th day of
October, 2011, from 9:06 a.m. to 12:59 p.m and 2:00 p.m.
to 3:41 p.m., before Janalyn Reeves, Certified Shorthand
Reporter, in and for the State of Texas, reported by
computerized stenotype machine, at the offices of
Attorney General of Texas, Price Daniels Building, 209
West 14th St., Austin, Texas, pursuant to the Federal
Rules of Civil Procedure and the provisions stated on



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5 Q. Okay. All done with that.

6 A. Now, on Exhibit 5 I did make markings on it.

7 Q. And we'll be giving that to the court reporter.

8 A. Okay.

9 Q. Did you approve that district that Mr. Downton
10 put in front of you, believing that it was in compliance
11 with the Voting Rights Act?

12 A. Yes.

13 Q. And did you place your trust for the Voting
14 Rights Act compliance in Mr. Downton's hands?

15 A. He and other lawyers, yes.

16 Q. And if your district doesn't comply with the
17 Voting Rights Act, would you like it to be redrawn?

18 A. Well, listen if the courts -- look I'm an
19 attorney. My duty is to follow the law as the law is
20 seen by the people who decide that. If judges want to
21 decide something else, so be it. I am sworn to follow
22 that.

23 Q. Okay. I'll take that as a yes.

24 A. Yes.

[154:2] - [173:24] 10/19/2011 Pena, Aaron Lionel

• Peña Affirmatives (NAACP)

page 154

2 Q. Are you aware of how many split precincts there
3 are in your district?

4 A. No.

5 Q. Using the map on the second page, could you mark
6 the precincts that are split on the map and I'll give
7 you a pen if that' --

8 A. I would be glad to do it but I'm sure it just
9 speaks for itself. You still want me to do it?

10 Q. I would.

11 A. How about circle them?

12 Q. That's fine.

13 A. It looks likes 14 has a split in it. It looks
14 like -- I think I marked on it. 107 has a split in it.
15 Looks like 31 has a little bitty one.

16 Q. 31 does not.

17 A. Oh, it does not? Is that the nature of it? Do
18 you see that little jutting piece in it that comes down?

19 Q. Could direct me to --

20 A. Take a look here. Do you see that little piece
21 jutting down? I'm sorry. Is that 31?

22 Q. That's not in district 41. That's in District
23 40.

24 A. Oh, forgive me.

25 Q. That's fine.

page 155

1 A. I got -- okay. 105 looks like its -- do you
2 agree with that?

3 Q. Yes. Maybe there's an easier way to do this.

4 A. 103?

5 Q. How about No. 6 in the southeast corner, the
6 yellow in the southeast. Is that split?

7 A. Can you point it to me? Am I in the right area
8 here? Here it is. 10 -- 006, yes, that's split.

9 Q. And how about 008 to its left, to its west?

10 A. Yes.

11 Q. And how about 025 to its east?

12 A. Yes.

13 Q. And how about 35 to its north?

14 A. Yes.

15 Q. And how about 47 to the west in the left leg?

16 A. Yes.

17 Q. And how about 48 just to the south of that?

18 A. Yes.

19 Q. And how about 95 to the south of that?

20 A. Yes.

21 Q. And how about 103 just the orange one to the
22 northwest of that?

23 A. Yes.

24 Q. And how about 88 to the north of 103?

25 A. Yes.

page 156

1 Q. And how about 62 which is -- you may recognize as
2 being Representative Gonzales's home precinct?

3 A. Yes.

4 Q. And is that Representative Gonzales's home
5 precinct?

6 A. That's what she says. I've never been by her
7 house.

8 Q. And how about -- have you -- you marked precinct
9 14?

10 A. Yes. That's my neighborhood over there.

11 Q. Okay. And how about precinct 124, that is just
12 to the south of representative Gonzales's home?

13 A. Yes.

14 Q. Okay. Do you -- can you count how many are
15 there?

16 A. No, I can't. I will trust your judgment.

17 Q. Would you agree with me if I were to say that
18 there are 14 split precincts?

19 A. I'll trust your judgment.

20 Q. Okay. All right. So for Precinct 6 in the
21 southeast, do you know what city that is?

22 A. I believe it to be Pharr.

23 Q. And what type of area is that?

24 A. It's an affluent area.

25 Q. And what is the area that is inside of district

page 157

1 41?

2 A. Well, it has Mission, McAllen, Edinburg.

3 Q. No. In that precinct?

4 A. I don't understand. Say it again.

5 Q. What is the area inside District 41 that's in

6 Precinct 6?

7 A. What's in it? You mean what buildings are in it?

8 Q. What is the area like?

9 A. Oh. There's a medical center that adjoins it.

10 Over here in 008. And so this is -- and probably --
11 yeah, 008. And so these are some of the doctors and
12 medical professionals that work in the medical center.

13 Q. And what is the area that is in Precinct 6 that
14 is not in District 41?

15 A. Down here?

16 Q. Uh-huh.

17 A. I assume it's empty land or less affluent areas.

18 Q. Did you ask Ryan Downton to include any portion
19 of Precinct 6 specifically in your district?

20 A. Okay. Did I verbally ask him? Is that what
21 you're asking?

22 Q. In any way?

23 A. I think it's better to say that I affirmed what
24 was in district -- what you see here.

25 Q. During the drawing process, other than, as we
page 158

1 previously discussed, your seeing the completed district
2 and signing off on it and asking for a little bit more
3 of Edinburg?

4 A. Yeah, I didn't draw the map.

5 Q. Okay. Did you -- did you ask Mr. Downton to
6 exclude any portion of Precinct 6 from your district?

7 A. No.

8 Q. Did you give him any information that would have
9 made him believe that any portion of Precinct 6 would be
10 better or worse for your electoral chances if you
11 included it or excluded it?

12 A. I think when I saw the final map and he showed it
13 to me on the screen, I said, "Those look like the right
14 areas."

15 Q. How about Precinct 8? We'll try and do this
16 relatively quickly. What city is Precinct 8 in?

17 A. Well, that may be McAllen. Okay. It could be
18 Pharr. It could be McAllen. I believe it's McAllen.

19 Q. Okay. And am I correct that that's the medical
20 center and surrounding area?

21 A. Yes.

22 Q. And what is the area that is excluded from
23 district 41?

24 A. From 008?

25 Q. Uh-huh.

page 159

1 A. Oh, it's that part below 006?

2 Q. Yes?

3 A. You know, I assume it's empty land or less
4 affluent areas.

5 Q. What would make you believe that?

6 A. Because I've driven down there. That
7 neighborhood that's in 006 is relatively new. It's a
8 relatively new area and you would notice it because
9 it's, like, brand new. And once you go past it, it
10 changes. But I'm not positive. I know there's a lot --
11 between that neighborhood as you drive towards the

12 border there is empty land and then there are -- there's
13 colonias. What we call colonias which is substandard
14 housing. Sometimes the roads aren't paved, sometimes
15 they are. Texas has done a better job of paving the
16 roads. But it's probably mixed, because there's a
17 floodplain in there. So I'm not sure if this is between
18 the floodplain or not.

19 If it's after the floodplain, then, yeah, there
20 would be colonias, but if it's before, it's probably
21 empty land.

22 Q. Okay. And did you ask Mr. Downton to
23 particularly include or exclude any part of Precinct 8?

24 A. No.

25 Q. Let's go up to Precinct 14, your house.

page 160

1 A. Yeah.

2 Q. Could you tell me a little bit about that
3 precinct?

4 A. It used to be a relatively affluent area.
5 Professionals or teachers or -- it has declined
6 somewhat.

7 Q. Okay.

8 A. But it's my old home base. That's actually the
9 neighborhood that Bobby Guerra grew up in. We grew up a
10 block away from each other. We consider that the old
11 neighborhood. "Neighborhood" in quotes.

12 Q. And why -- do you know why most of Precinct 14 is
13 not included in your district?

14 A. I assume it votes heavily Democratic.

15 Q. And did you tell Mr. Downton to include or
16 exclude any part of precinct 14 other than your
17 immediate home?

18 A. No. I just said, "Hey, you've got to give me my
19 home."

20 Q. What part of Edinburg did you ask him to include
21 when you spoke with him?

22 A. Well, this little extension that extends out to
23 my house was all I asked. Everything else was already
24 done.

25 Q. Okay. So the original draft that Mr. Downton

page 161

1 showed you did not include your home?

2 A. That's what I seem to remember, because I
3 remember saying, "Well, you've got to include my home."

4 Q. Okay. So I guess as long as we're at Precinct
5 14, let me ask you about Precinct 107. Do you know what
6 city that is. Are we still in Edinburg?

7 A. Let's see.

8 Q. Just next to 14?

9 A. Oh, yeah, that's Edinburg.

10 Q. And is that a similar area to Precinct 14?

11 A. It's relatively similar, yeah. It's less
12 affluent.

13 Q. And did you tell Ryan Downton to specifically
14 include or exclude any of precinct 107?

15 A. I think when we went out to grab my home, that I
16 said I consider this part of the old neighborhood.
17 That's the reason it has a little hump there. This is
18 where I spent a lot of time in my childhood.

19 Q. Okay. And what is in the area that's excluded
20 from district 41?

21 A. Similarly situated people. I just probably
22 didn't know them as well.

23 Q. And why?

24 A. In other words, these are people I know.

25 Q. Why would the rest of Precinct 107 be excluded
page 162

1 from your district?

2 A. I think the reason is I simply said, "Hey, get my
3 home and you might as well add these other parts where I
4 played football and that was my old high school, so I
5 played football there." Believe it or not looking at me
6 you wouldn't think that but I did. We had fun. Those
7 are places where I had fun as a kid.

8 Q. And so you didn't ask him for the rest of 107
9 basically?

10 A. No. I think it wasn't that I was excluding 107.
11 It's just that I said, "Oh, include the high school and
12 areas where I spent a lot of time."

13 Q. So it's just that he included only the areas you
14 asked for?

15 A. Right. In other words, if my memory serves me

16 correctly, that was not in one of the plans I looked at.
17 So I said, "Oh, get my home and add the other areas of
18 the community." But these areas of the community that
19 I've added, they're the same areas Bobby Guerra grew up
20 in, my adversary.

21 Q. How about Precinct 25 the very southeast corner
22 of the district? Down back near the medical center.

23 A. I see that.

24 Q. Do you know what city that is?

25 A. That's probably Pharr.

page 163

1 Q. What type area is that?

2 A. As I told you, it depends on whether or not it's
3 in the floodplain or not. Do you notice that 106
4 there's a curvature? See how it curves? That may be a
5 reflection of the floodplain. So if it's inside the
6 floodplain it's just land. But I will say that at some
7 point later on you have colonias which are different
8 from 006.

9 Q. Okay. And do you know specifically what the area
10 that's included in your district from Precinct 25 is?

11 A. Do I know the area?

12 Q. Yeah. Do you know what that is?

13 A. I mean, I've driven it. I have a sense of it.
14 These are people who have lived in the country for a
15 while. People who tend to be more affluent. People who
16 from -- who are probably the establishment of Pharr.

17 Q. Do you know who the folks in the southern part of
18 the precinct are?

19 A. No. Well, look. Okay. You know, I spent my
20 life up here half the time in Austin. So went I was a
21 child I got to know everybody and in college I got to
22 know a few people, although I attended University of
23 Texas at Austin. So I don't have the -- I don't get to
24 know these people way down here. I know them only
25 because I have relatives that live in this area.

page 164

1 Q. Okay.

2 A. I visited the schools in Las Milpas, which is one
3 of the colonias down here and given talks against drugs
4 and things like that.

5 Q. Do you know why Mr. Downton would include only
6 part of 25 and not the rest?

7 A. I assume it had to do with philosophical voting,
8 conservative versus liberal.

9 Q. Are you aware that --

10 A. The only reason I say conservative versus liberal
11 is because we have conservative Democrats and
12 Republicans, so I'm covering my basis by saying
13 conservative.

14 Q. Are you aware that votes are only tabulated at
15 the precinct level in the State of Texas?

16 A. Yeah, that's right.

17 Q. So how would how would you determine within a
18 single precinct who the conservatives were and who the
19 liberals were?

20 A. You know, I don't know how that was done.

21 Q. Okay.

22 A. I think it has to do with voting patterns. You
23 know, I don't know. I really just don't know.

24 Q. That's your honest answer. I'm happy to hear
25 that. Not happy to hear that, but happy to hear the

page 165

1 truth.

2 A. Only giving you the truth.

3 Q. And Precinct 35, just to the north of 6, is that
4 still in Pharr?

5 A. That's probably McAllen. Well, 35 you said,
6 right?

7 Q. Uh-huh. Just to the north of Precinct 6.

8 A. That could be Pharr -- that's Pharr.

9 Q. Okay.

10 A. Yeah. I think that's Pharr.

11 Q. And are you at all familiar with what's in that
12 area?

13 A. Yeah.

14 Q. And do you know if there's a distinction between
15 what is split into the district -- into District 41 and
16 what is split out?

17 A. 35 is a solid working class community in Pharr
18 just like much of the rest of the Valley.

19 Q. Okay. Do you know if there's any distinction

20 between what's to the west of, I'm not sure of the name
21 of the road, but the eastern border of the eastern leg
22 of the running man and what's to the west of the line?

23 A. Without a doubt, the Sharyland area or the
24 Mission area is very wealthy.

25 Q. I meant within Precinct 35, just that little
page 166

1 piece that's to the left of the line, if you know if
2 there's any distinction between the two?

3 A. One is McAllen and one is Pharr.

4 Q. Okay. And did you ask that any part of that
5 precinct be included or excluded from the district?

6 A. No. I simply ratified what I saw.

7 Q. Okay. And Precinct 47 in the left leg, inside
8 edge of the left leg, do you know what city that's in?
9 It's an orange one.

10 A. I assume it's Mission.

11 Q. And --

12 A. Or what we call Sharyland.

13 Q. Okay do you know what's on the portion to the
14 west of the line, the portion that's included in your
15 district in 47?

16 A. Oh, yeah. If you were to drive down, you would
17 notice a different right away.

18 Q. What's the difference between what's included in
19 47 and what's excluded in 47?

20 A. I'm not sure where this line goes. It's probably
21 down one of the smaller roads, but this is the more
22 affluent area of the Valley.

23 Q. So the portion to the east of the line between
24 the legs is less affluent than the portion to the --

25 A. Not necessarily so. But speaking generally, yes.
page 167

1 Q. And is there any likelihood that --

2 A. Let me also say that my sense is that this is
3 where the conservatives are.

4 Q. How would someone determine this is where the
5 conservatives are in the split precincts?

6 A. As I said to you before everybody is socially
7 conservative, it's just a matter of if they become
8 economically conservative depending on their status on

9 the economic ladder. I assume what they do is look and
10 that's how they determine it by the economic status of
11 the home you live in. You could be very, very poor and
12 live in a very big house. I used to be poor and lived
13 in a big house. I understand. I always rent.

14 Q. But it's your belief that there's no racial
15 distinction in these areas between who lives in the
16 nicer houses?

17 A. Okay. The leg, the affluent area, is very
18 Mexican.

19 Q. The left leg?

20 A. The left leg. Culturally, they're very Mexican.
21 The McAllen part of the leg is less Mexican. These are
22 the affluent recent immigrants from Mexico and their
23 children. They're very wealthy people. These are the
24 business owners and professionals who have chosen to
25 live here and they tend to be the new rich. By that I
page 168

1 mean they were very poor and they became very wealthy.
2 So their orientation is more culturally Mexican than the
3 body part of 41.

4 Q. The trunk?

5 A. The chest part.

6 Q. The chest. Okay.

7 A. Those tend to be assimilated Hispanics, some
8 Anglos, multigenerational people, more -- but by that I
9 mean more assimilated folks. These tend to be very
10 Mexican in their orientation. Even though they may be
11 American, their cultural orientation is more Mexican.

12 Q. And did --

13 A. They have some similarity to the spur in Pharr.
14 The new rich, the mixed families of Mexicans and
15 Americans, you know, the new -- new immigrants, whose
16 children are Americans and are highly educated.

17 Q. But you didn't tell Mr. Downton that you wanted
18 one part of 47 and not a part of another?

19 A. No, I didn't to that.

20 Q. And would you say that everything we just said
21 about 47 also applies to 48?

22 A. Yeah.

23 Q. How about 95?

24 A. Yeah. I wish I could drive those areas because
25 the one thing about big cities in Texas is you'll have
page 169

1 affluent areas like Westlake or Tarrytown and then your
2 poorer communities are miles apart. Where we live, you
3 can have a wealthy community and on the other side of
4 the street a very poor community. So I can only make
5 broad generalizations.

6 Q. So in terms of the information that you have now
7 you don't know well enough to be able to say that on one
8 side of that small street that splits up 47, a community
9 is particularly wealthy and on the other side it's not.

10 A. The area of Sharyland is perceived to be wealthy
11 and if you drive down it, it's as wealthy as some of the
12 neighborhoods in Austin.

13 Q. Is Sharyland only in the City of Mission or does
14 it include part of McAllen?

15 A. It is only in the City of Mission, although
16 McAllen legally doesn't blend but many people live in
17 Sharyland who still think they're in McAllen. In other
18 words, they're McAllen people who live in Sharyland and
19 they still think they're in McAllen.

20 Q. So sort of the greater McAllen area?

21 A. Yes that's right. So if you lived in Westlake,
22 which is an affluent neighborhood here in Austin, you'd
23 think you're in Austin, but technically you're in
24 Westlake.

25 Q. Okay.

page 170

1 MR. FREEMAN: I have a request to go on
2 break for 5 minutes.

3 (Brief recess.)

4 MR. FREEMAN: We're back after a very short
5 break.

6 Q. (BY MR. FREEMAN) Let's try and speed this up a
7 little bit if we can. Precinct 62, which is in the
8 northeast and contains Representative Gonzales's
9 district, did you instruct Mr. Downtown to split that
10 precinct?

11 A. No. I think that follows the instruction that I
12 gave before which was much earlier to allow people to

13 have their own districts to run in and win. The
14 neighboring district is heavily Democratic and that
15 would allow her to run and win that seat.

16 Q. Did you tell Mr. Downton any particular parts of
17 that district that you did want or didn't want other
18 than Representative Gonzales's house? That precinct,
19 excuse me.

20 A. No. I generally ratified things. Okay? So, no,
21 I didn't.

22 Q. Okay. Precinct 88, which is the green precinct
23 to the northwest. Did you ask Mr. Downton to split that
24 precinct?

25 A. I'm sorry. I don't see it. Say it again.

page 171

1 Q. It's the green one. It's sort of above the left
2 arm?

3 A. Oh. I don't know where that is, and no I didn't
4 specifically tell him that.

5 Q. Do you have any reason to believe that the
6 political performance of one part of that district is
7 superior to the other?

8 A. No.

9 Q. Precinct 103, which is in the left leg: Did you
10 ask Mr. Downton to split that precinct?

11 A. I can't find it, but I can say no.

12 Q. Let's find it first.

13 A. Oh, here. Here it is.

14 Q. The orange one?

15 A. Let me say this. Okay? There was a point at
16 which I was asked where Sergio Munoz spoke up and he
17 said, "Hey, they don't even have my office in my
18 district."

19 And so one of the members of the committee came
20 to me and said, "Hey put his office back in the
21 district." So I went to -- I went to Ryan Downton and
22 said could you put his office back in the district and
23 that's what happened.

24 Q. Do you know?

25 A. It's around that area somewhere.

page 172

1 Q. Okay. So somewhere around Pharr -- excuse me,

2 not Pharr --

3 A. Mission.

4 Q. Mission. Thank you.

5 But you don't have any reason to believe that
6 part of Precinct 103 is more politically favorable than
7 the other?

8 A. No.

9 Q. Almost done. Precinct 105. It's the big purple
10 one; it's the head.

11 A. Yeah. Up here.

12 Q. Yeah. Did you ask Mr. Downtown to split that
13 precinct?

14 A. No.

15 Q. Do you have any reason to believe that any part
16 of that precinct is more politically favorable than the
17 other part?

18 A. No.

19 Q. And last, but not least, Precinct 124 in the
20 right armpit.

21 A. That's okay.

22 Q. Did you ask Mr. Downton to split that precinct?

23 A. No. Well only to the extent that my initial
24 conversation was allow Representative Gonzales and other
25 members to have a place to run. Don't pair us.

page 173

1 Q. Okay. And do you have any reason to believe that
2 any portion of that district -- precinct is more
3 politically favorable or not?

4 A. No, I have no idea.

5 Q. Okay. All done with that.

6 A. Now, on Exhibit 5 I did make markings on it.

7 Q. And we'll be giving that to the court reporter.

8 A. Okay.

9 Q. Did you approve that district that Mr. Downton
10 put in front of you, believing that it was in compliance
11 with the Voting Rights Act?

12 A. Yes.

13 Q. And did you place your trust for the Voting
14 Rights Act compliance in Mr. Downton's hands?

15 A. He and other lawyers, yes.

16 Q. And if your district doesn't comply with the

17 Voting Rights Act, would you like it to be redrawn?

18 A. Well, listen if the courts -- look I'm an
19 attorney. My duty is to follow the law as the law is
20 seen by the people who decide that. If judges want to
21 decide something else, so be it. I am sworn to follow
22 that.

23 Q. Okay. I'll take that as a yes.

24 A. Yes.